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11 United States of America

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13  
14 IN THE UNITED STATES DISTRICT COURT  
15 EASTERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,  
17 Plaintiff,  
18 v.  
19 JOSE MARIO QUINTERO BELTRAN,  
20 Defendant.

CASE NO. 5:21-MJ-00015-JLT

AMENDED STIPULATION REGARDING  
EXCLUDABLE TIME PERIODS UNDER SPEEDY  
TRIAL ACT; [PROPOSED] FINDINGS AND  
ORDER

DATE: April 16, 2021  
TIME: 2:30 p.m.  
COURT: Hon. Jennifer L. Thurston

1 This case is set for a preliminary hearing on April 16, 2021. On April 17, 2020, this Court issued  
2 General Order 617, which suspends all jury trials in the Eastern District of California scheduled to  
3 commence before June 15, 2020, and allows district judges to continue all criminal matters to a date  
4 after June 1. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in  
5 the Eastern District of California until further notice and allows district judges to continue all criminal  
6 matters. This and previous General Orders were entered to address public health concerns related to  
7 COVID-19.

8 Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held “no later than 14 days  
9 after initial appearance if the defendant is in custody,” unless the defendant consents and there is a  
10 “showing of good cause”, or if the defendant does not consent and there is a “showing that extraordinary  
11 circumstances exist and justice requires the delay.” Here, the defendant consents and there is good  
12 cause.

1       Although the General Orders address the district-wide health concern, the Supreme Court has  
 2 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
 3 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.  
 4 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no  
 5 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 6 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 7 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally  
 8 or in writing").

9       Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 10 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice  
 11 continuances are excludable only if "the judge granted such continuance on the basis of his findings that  
 12 the ends of justice served by taking such action outweigh the best interest of the public and the  
 13 defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless  
 14 "the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the  
 15 ends of justice served by the granting of such continuance outweigh the best interests of the public and  
 16 the defendant in a speedy trial." *Id.*

17       The General Orders exclude delay in the "ends of justice." 18 U.S.C. § 3161(h)(7) (Local Code  
 18 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 19 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 20 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 21 following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 22 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*  
 23 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
 24 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
 25 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

26       In light of the societal context created by the foregoing, this Court should consider the following  
 27 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
 28 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date

1 for the preliminary hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any  
2 pretrial continuance must be “specifically limited in time”).

3 **STIPULATION**

4 Plaintiff United States of America, by and through its counsel of record, and defendant, by and  
5 through defendant’s counsel of record, hereby stipulate as follows:

6 1. By previous order, this matter was set for preliminary hearing on April 16, 2021.  
7 2. By this stipulation, defendant now moves to continue the preliminary hearing until **June  
8 1, 2021, at 2:30 p.m.** and to exclude time between April 16, 2021, and June 1, 2021, under Local Code  
9 T4.

10 3. The parties agree and stipulate, and request that the Court find the following:

11 a) The government has represented that initial discovery associated with this case  
12 consists primarily of reports, recordings and photographs, and the government will provide the  
13 defendant with initial discovery on or before April 16, 2021.

14 b) Counsel for defendant desires additional time to review the discovery, consult  
15 with this client, conduct further investigation, and discuss a possible resolution with the  
16 government.

17 c) Counsel for defendant believes that failure to grant the above-requested  
18 continuance would deny him the reasonable time necessary for effective preparation, taking into  
19 account the exercise of due diligence.

20 d) The government does not object to the continuance.

21 e) Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held “no later  
22 than 14 days after initial appearance if the defendant is in custody,” unless the defendant  
23 consents and there is a “showing of good cause”. Here, the defendant consents and there is good  
24 cause as set forth herein.

25 f) In addition to the public health concerns cited by General Order 617 and  
26 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in  
27 this case because counsel and other relevant individuals have been encouraged to telework and  
28 minimize personal contact to the greatest extent possible. It will be difficult to avoid personal

1 contact should the preliminary hearing proceed.

2 g) Based on the above-stated findings, the ends of justice served by continuing the  
3 case as requested outweigh the interest of the public and the defendant in an indictment or trial  
4 within the original dates prescribed by the Speedy Trial Act.

5 h) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
6 et seq., within which an indictment must be filed and within which a trial must commence, the  
7 time period of April 16, 2021 to June 1, 2021, inclusive, is deemed excludable pursuant to 18  
8 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by  
9 the Court at defendant's request on the basis of the Court's finding that the ends of justice served  
10 by taking such action outweigh the best interest of the public and the defendant in a speedy  
11 indictment/trial.

12 **[Remainder of page intentionally left blank.]**

1       4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
2 Speedy Trial Act dictate that additional time periods are excludable from the period within which an  
3 indictment must be filed and a trial must commence.

4       IT IS SO STIPULATED.

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6       Dated: April 9, 2021

7       PHILLIP A. TALBERT  
8                   Acting United States Attorney

9       \_\_\_\_\_  
10      /s/ CHRISTOPHER D. BAKER  
11      CHRISTOPHER D. BAKER  
12                   Assistant United States Attorney

13       Dated: April 9, 2021

14       \_\_\_\_\_  
15      /s/ DAVID A. TORRES  
16      DAVID A. TORRES  
17                   Counsel for Defendant  
18                   JOSE MARIO QUINTERO  
19                   BELTRAN

20                   **[PROPOSED] FINDINGS AND ORDER**

21       IT IS SO FOUND AND ORDERED.

22       IT IS SO ORDERED.

23       Dated: April 12, 2021

24       \_\_\_\_\_  
25      /s/ Jennifer L. Thurston  
26                   CHIEF UNITED STATES MAGISTRATE JUDGE